



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

200602053

OCT 19 2005

SE: T. EP: RA: WK

U.I.L. 402.08-00

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Legend:

- Taxpayer A = \*\*\*\*\*
- Plan X = \*\*\*\*\*
- Employer K = \*\*\*\*\*
- Amount D = \*\*\*\*\*
- Amount E = \*\*\*\*\*
- Account J = \*\*\*\*\*
- Company C = \*\*\*\*\*

Dear \*\*\*\*\*:

This is in response to your letter dated May 6, 2005, as supplemented by correspondence dated September 28, 2005, and September 29, 2005, submitted on your behalf by your authorized representative, in which you request a waiver of the 60 day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalties of perjury in support of your request.

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Pursuant to the terms of a divorce decree dated July 30, [REDACTED] Taxpayer A was identified as an alternate payee and ordered to receive, pursuant to the terms of a Qualified Relations Domestic Order, an interest in Plan X, a savings retirement plan sponsored by Employer K and in which her former husband participates. Taxpayer A's former husband's Plan X account balance consisted of shares of Employer K stock.

Taxpayer A asserts that during [REDACTED] and [REDACTED] she made numerous attempts to have her interest in Plan X distributed in a trustee to trustee transfer to an individual retirement arrangement (IRA). Taxpayer A further states that she was informed by Employer K personnel that the trustee to trustee transfer could only be completed if she had a Personal Identification Number (PIN) and that, upon request, a PIN could be mailed to her.

Taxpayer A states that she moved in May [REDACTED] and notified all of her financial institutions of her new address. She also states that she began receiving Plan X account statements at this address and assumed that her new address had been changed in all departments of Employer K. Taxpayer A states that she made a request for a PIN and assumed that one would be mailed to her at her new address. Taxpayer A states that she never received a PIN and was never told by Employer K that the PIN would be mailed from a different department within Employer K. Taxpayer A discovered that this department was not aware of her new address.

Taxpayer A states that in September [REDACTED] she received a letter from Employer K informing her that she had not taken a distribution of her Plan X account balance. Taxpayer A asserts that at this time she called the administrator of Plan X to request a PIN and was informed that one would be mailed to her. Taxpayer A also states that she verified her address with the administrator's office, but never received a PIN.

Since Taxpayer A had not received a PIN she assumed that her Plan X interest remained in Plan X. In early [REDACTED] Taxpayer A states that she received a Form 1099-R indicating that a distribution in the amount of Amount D was made to her from Plan X in [REDACTED]. Upon inquiry with Employer K, Taxpayer A states that she learned that Employer K automatically distributed her Plan X interest in October [REDACTED] to a dividend reinvestment account established in her name. Employer K sold a sufficient number of shares of stock to generate the necessary tax withholdings (Amount E) and the remaining shares were placed in this dividend reinvestment account. In early 2005, Taxpayer A's Plan X interest was transferred to a separate account, Account J, established in her name with Company C. By the time Taxpayer A discovered that her Plan X interest had been distributed, the 60-day rollover period had expired.

In a letter to the Service dated September 28, [REDACTED] from Employer K, it acknowledged that Taxpayer A had never received a letter from the plan

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administrator stating that her account would automatically be distributed in October [REDACTED] nor had she received the PIN to access her account to initiate the transfer of her Plan X interest to an IRA. Employer K also acknowledged that Taxpayer A tried to correct her address within its various departments but that such correction was not completed until after her account balance had been distributed.

Taxpayer A asserts that she has never received any funds or stock certificates from Employer K and that it was her intent to transfer her interest in Plan X to an IRA. Taxpayer A states that she failed to accomplish the transfer due to confusion in receiving a PIN to initiate the transfer of her Plan X account balance to an IRA because her address had not been updated within the various departments in Employer K responsible for making the distribution. Company C confirmed that the shares of stock remain invested in Account J and that Taxpayer A had not accessed these assets since they have been deposited into Account J.

Based upon the foregoing facts and representation, you request that Service waive the 60 day rollover requirement with respect to the distribution of Amount D from Plan X.

Section 402(c) of the Code provides rules governing rollover of amounts from exempt trust to eligible retirement plans, including IRAs.

Code section 402(c)(1) provides, generally, that if any portion of an eligible rollover distribution from a qualified trust is paid to the employee in an eligible rollover distribution and the employee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution property other than money, the amount so transferred consists of property distributed, such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to any employee of all or a portion of the balance to the credit of an employee in a qualified trust, except that such term shall not include

- (A) any distribution which is one of a series of substantially equal periodic payment (not less frequently than annually) made-

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- (i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or
  - (ii) for a specified period of 10 years or more,
- (B) any distribution to the extent the distribution is required under section 401(a)(9), and
- (C) any distribution which is made upon hardship of the employee.

Code section 402(c)(8) defines "eligible retirement plan" as (i) an individual retirement account described in section 408(a); (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract); (iii) a qualified trust; (v) an annuity plan described in section 403(a); (v) an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer as described in section 457(e)(1)(A); and (vi) an annuity contract described in section 403(b).

Code section 402(c)(3)(A) provides, generally, that section 402(c)(1) shall not apply to any transfer of a distribution made after the 60<sup>th</sup> day following the day on which the distributee received the property distributed.

Code section 402(c)(3)(B) provides that the Secretary may waive the 60-day requirement under subparagraph (A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B).

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that she never received the PIN that was required in order for Employer K to transfer her interest in Plan X in a trustee to trustee transfer to an IRA because her mailing address had not been updated within the various departments of Employer K responsible for making the plan distribution.

Pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from Plan X.

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**200602053**

Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount D to an IRA. Provided all other requirements of section 402(c)(1) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 402(c)(1) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling does not authorize the rollover of amounts that are required to be distributed to Taxpayer A by section 401(a)(9) of the Code.

This letter assumes that Plan X satisfies the requirement for qualification under Code section 401(a) at all times relevant to this transactions.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions concerning this ruling, please contact  
\*\*\*\*\*SE:T:EP:RA:T2.

Sincerely yours,

**(signed) JOYCE E. FLOYD**

Joyce E. Floyd, Manager  
Employee Plans Technical Group 2

Enclosures:  
Deleted copy of letter ruling  
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